

REPRESENTATIVE FOR PETITIONER:

Paul M. Jones, Jr., Attorney

REPRESENTATIVE FOR RESPONDENT:

Jess Reagan Gastineau, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

McKee Realty Corporation,)	Petition Nos.: 49-101-16-1-4-00741-18
)	49-101-17-1-4-00740-18
Petitioner,)	
)	Parcel No.: 1072420
v.)	
)	County: Marion
Marion County Assessor,)	Township: Center
)	
Respondent.)	Assessment Years: 2016 & 2017

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

September 4, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Respondent had the burden to prove the subject property was correctly assessed. Did the Respondent prove the assessments were correct?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2016 and 2017 assessment appeals with the Marion County Assessor. On June 29, 2018, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner relief. The Petitioner timely filed Petitions for Review of Assessment (Form 131s) with the Board.
3. On June 6, 2019, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a consolidated hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Certified tax representative Carla Higgins was sworn and testified on behalf of the Petitioner.¹ Marion County Assessor's office employees, Melissa Tetrick and Douglas E. Rogers, were sworn and testified on behalf of Respondent.
5. The Petitioner offered the following exhibits:

Petitioner Exhibit A: 2016 and 2017 Form 131s,
Petitioner Exhibit B: Petitioner's burden of proof calculation and 2015 subject property record card.

Rebuttal Exhibits:

Petitioner Rebuttal Exhibit 1: Photograph, parking fees, 2012 and 2015 sales disclosure forms, and property record card for 363 Massachusetts Avenue; parking fees for 219 North Delaware; and property record card for 341 Massachusetts Avenue,
Petitioner Rebuttal Exhibit 2: Aerial photographs and Indiana Secretary of State business information for 124 North East Street and 132 North East Street,
Petitioner Rebuttal Exhibit 3: Photograph of 20 West Saint Clair Street,
Petitioner Rebuttal Exhibit 4: Aerial photographs of 1019 North Capitol Avenue, 220 East North Street, 1002 North Illinois Street, and 1010 North Senate Avenue; Indiana Secretary of State business information

¹ McKee Realty Corporation property manager Brian D. Riley was sworn but did not testify.

- for Stutz Capital Corral LLC and Stutz Business Center II, LLC; sales disclosure form for 1019 North Capitol Avenue; and property record card for 1025 North Capitol Avenue,
- Petitioner Rebuttal Exhibit 5: Photographs and owner search sheet for 106 East North Street,
- Petitioner Rebuttal Exhibit 6: Photographs, sales disclosure forms, and property record card for 846 North College Avenue; aerial photograph of 220 East North Street,
- Petitioner Rebuttal Exhibit 7: Aerial photograph, Indiana Secretary of State business ownership, and sale price for 420 North East Street; sales disclosure form for 333 North Alabama Street; Indiana Secretary of State business information for Endless Success Foundation, Inc.; property record cards for 416 East Vermont Street and 302 East New York Street; Indianapolis zoning violation sheet for 420 North East Street,
- Petitioner Rebuttal Exhibit 8: Photographs and parking fees for 320 North Capitol Avenue; emails between Leslie Chandler, Brian Riley, and Carla Higgins dated June 5, 2019,
- Petitioner Rebuttal Exhibit 9: Property record cards for 320 East Market Street and 131 North Alabama Street; 2015 sales disclosure forms for 131 North Alabama Street and 333 East Ohio; 2013 sales disclosure form for 131 North Alabama Street,
- Petitioner Rebuttal Exhibit 10: Property record card for 421 East Ohio Street; sales disclosure form and property record card for 427 East Ohio Street,
- Petitioner Rebuttal Exhibit 11: Sales disclosure form and property record card for 811 North Illinois Street; sales disclosure form for 810 North Illinois Street,
- Petitioner Rebuttal Exhibit 12: Respondent's PTABOA sales comparison evidence,
- Petitioner Rebuttal Exhibit 13: Parking fees for 601 North Delaware,
- Petitioner Rebuttal Exhibit 14: Petitioner's list of sale prices and assessed values per acre for the subject property and comparable parking lots,
- Petitioner Rebuttal Exhibit 15: Real Property Assessment Guidelines, Chapter 2, pages 67 and 68,
- Petitioner Rebuttal Exhibit 16: *The Appraisal of Real Estate*, pages 45, 46, 364, 386, 388, 389, 408, and 410,

Petitioner Rebuttal Exhibit 17: Petitioner's 2015 to 2016 parking lot assessed values per acre arrayed from high to low,
Petitioner Rebuttal Exhibit 18: Petitioner's 2015 to 2016 parking lot assessed values arrayed according to percentage of change.

6. The Respondent offered the following exhibits:

Respondent Exhibit RA: 2016 and 2017 subject property record cards,
Respondent Exhibit RB: Aerial photograph of the subject property,
Respondent Exhibit RC: Property record cards for 14 different properties,
Respondent Exhibit RD: Nineteen sales disclosure forms,
Respondent Exhibit RE: "IRED" comparable sales sheets for nine different properties,
Respondent Exhibit RF: Comparable sales summary sheets for 15 different properties,
Respondent Exhibit RG: Sales comparison grid,
Respondent Exhibit RH: Property record cards for 71 different properties,
Respondent Exhibit RI: Chart indicating assessments of comparable properties,
Respondent Exhibit RJ: Land order map.²

7. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.

8. The property under appeal is a 7,600 square foot paved parking lot located at 212 East North Street in Indianapolis.

9. For 2016 the PTABOA determined the total assessment was \$155,800 (land \$152,000 and improvements \$3,800). For 2017 the PTABOA determined the total assessment was \$156,000 (land \$152,000 and improvements \$4,000).

10. At the hearing, the Petitioner requested the 2016 and 2017 total assessments be reduced to the 2015 level of \$110,000.

² Respondent's exhibit coversheet lists Respondent's Exhibit RK, but this exhibit was not submitted into evidence.

OBJECTIONS

11. Mr. Jones objected to the testimony of Melissa Tetrick because the Assessor failed to include her on its list of witnesses. In response, Ms. Gastineau claimed Ms. Tetrick's testimony was only to authenticate Respondent's Exhibit RJ, the Land Order map, and the neighborhood land base rate of \$20 per square foot. The ALJ took the objection under advisement. Because the Assessor failed to comply with the Board's procedural rules, we sustain the objection and exclude Ms. Tetrick's testimony. *See* 52 IAC 2-7-1(f).
12. Ms. Gastineau objected to Petitioner's Rebuttal Exhibits 1-14 for lack of "foundation." Ms. Gastineau argued "it is not clear what these documents are, who prepared them, when they were prepared, or why they were prepared." In response Mr. Jones claimed the rebuttal exhibits directly relate to Respondent's Exhibit RG, the sales comparison grid, and that his witness, Ms. Higgins, would provide the foundation. The ALJ took the objection under advisement. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). The Board may exclude evidence offered in rebuttal which should have been presented in the party's case-in-chief, but is not required to do so. *Id.* Here, the Board finds the exhibits were specifically offered to challenge the comparable properties offered by the Assessor. Further, there is nothing in the record to suggest that the exhibits should have been presented as part of the Petitioner's case-in-chief. For these reasons, the objection is overruled and the Petitioner's Rebuttal Exhibits 1-14 are admitted.
13. Ms. Gastineau also objected to Petitioner's Rebuttal Exhibits 17 and 18 arguing they are irrelevant. According to Ms. Gastineau, because the 2015 assessed value was based on a settlement agreement "it was not supported by market data so it doesn't make any sense to use" these exhibits. In response Mr. Jones argued the data in both exhibits is derived from Respondent's Exhibit RI. The ALJ took the objection under advisement. The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled and Petitioner's Rebuttal Exhibits 17 and 18 are admitted.

14. The Board notes the above evidentiary rulings have no effect on this final determination.

PETITIONER'S CONTENTIONS

15. The assessment is too high. The total assessment increased from \$110,000 in 2015 to \$155,800 in 2016. The assessment increased again in 2017 to \$156,000. No explanation was given for the 41.64% increase. Therefore the 2016 and 2017 assessments should be reduced to the 2015 level of \$110,000. *Jones argument; Higgins testimony; Pet'r Ex. B; Pet'r Rebuttal Ex. 12, 17, 18.*
16. Ms. Higgins explained the total assessment was reduced in 2014 to \$110,000 as a result of a settlement negotiation. This value carried forward to 2015 as well. In 2016 the assessment was increased to \$155,800. According to Ms. Higgins, she "believed" the increase was the result of a computer error and the error could be corrected. But the Assessor disagreed and stated the increase was not made in error. *Higgins testimony; Pet'r Ex. A.*
17. In an effort to rebut the Assessor's case, Ms. Higgins analyzed the Assessor's purportedly comparable properties. She examined the following properties:
- The 48 space parking lot located at 363 Massachusetts was purchased by the adjoining building owner in 2012 for \$470,000. In 2015 the parking lot and the neighboring building sold for \$3,825,000. The parking lot is private parking on weekdays and charges an hourly parking fee of \$5.00 and \$10.00 on weeknights and weekends.³ The Petitioner and the Assessor agree this property is superior to the subject property.

³ Ms. Higgins also submitted the fee schedule of a nearby parking lot located at 219 North Delaware. According to Ms. Higgins, the monthly parking fee for this lot is \$110 per month. Additionally, this lot charges an hourly fee of \$5.00 on the weeknights and weekends. The parking fees for this property are "superior" to the subject property. *Higgins testimony; Pet'r Rebuttal Ex. 1.*

- The 54 space parking lot at 1019 North Capitol Avenue was purchased by ETJ Ventures, also known as the Stutz building, in 2014 for \$515,000. The intent of the purchase was to meet parking requirements for the Stutz building.
- According to Respondent's Exhibit RG, the 48 space parking lot located at 106 East North Street sold in 2015 for \$330,000. Google photographs indicate that beginning in October 2017 and concluding in September 2018 a building was constructed on this property, therefore constituting a change in use.
- The secured 59 space parking lot located at 846 North College Avenue sold in 2015 for \$525,000. This price equates to \$795,454.54 per acre.
- The parking lots located at 415 North New Jersey Street and 420 North East Street were purchased from two separate owners by GP-CM. The State of Indiana sales disclosure database indicates that three other properties were also purchased by GP-CM, with two being adjoining apartment buildings. For this reason the motivation for purchasing the two parking lots is unknown. Therefore, the sales should not be considered valid in determining the value of the subject property.
- The 19 parking space lot located at 320 North Capitol Avenue is smaller than the subject property and is located near the capitol building. This private parking lot charges a monthly fee of \$85.00 per space.
- According to Respondent's Exhibit RG, 419 East Ohio Street, or parcel 1037911, sold in 2018 for \$955,000. However, according to the property record card, the address for parcel 1037911 is 427 East Ohio Street. This property was assessed at \$127,900 in 2017. Ms. Higgins testified that she was unable to verify what "properties" were included in the 2018 sale. Nonetheless, the sale occurred after the relevant valuation dates for this appeal.

- The property located at 810 North Illinois Street sold along with the 811 North Illinois Street property. Ms. Higgins testified she was unable to determine if the total \$900,000 sale price was allocated between the two properties or if 810 North Illinois Street “actually sold for \$250,000 as stated on the sales disclosure form.” Ms. Higgins also testified that she could not determine if the sale was valid.
- Ms. Higgins also compared the monthly parking fee of the parking lot located at 601 North Delaware to the subject property in an attempt to determine if “market location” had an effect on the parking fees charged. These lots both charged a monthly fee of \$75. The majority of the Respondent’s purportedly comparable properties charged higher parking fees.

Higgins testimony; Pet’r Rebuttal Ex.1, 4, 5, 6, 7, 8, 9, 10, 11, 13.

18. According to Ms. Higgins, the Real Property Assessment Guidelines (Guidelines) state that “parking accommodations” are to be valued by front foot, square foot, unit density or acreage.⁴ The Guidelines do not address valuing a parking lot on a per space basis, therefore the Assessor’s calculation fails to establish the 2016 and 2017 assessed values are correct. Additionally, parking space information is not publicly or readily available and the Assessor failed to provide listings on the purportedly comparable properties indicating the number of parking spaces on each property. *Higgins testimony; Pet’r Rebuttal Ex. 15.*
19. Ms. Higgins also prepared two charts examining the data found in the Assessor’s comparable assessment analysis. The first chart calculated the assessed value of the parking lots on a per acreage basis. This chart indicates the subject property is assessed at “one of the higher rates per acre in the area.” According to the Assessor’s witness, there are only four purportedly comparable properties “inferior” to the subject property;

⁴ *The Appraisal of Real Estate*, incorporated by reference in the Real Estate Assessment Manual, states that vacant land is valued by price per front foot, square foot, acre, buildable square foot and buildable unit. Ms. Higgins testified that vacant land is the closest classification to parking accommodations. *Higgins testimony; Pet’r Rebuttal Ex. 16.*

however, this chart reveals “numerous” properties that are assessed at a lower per acreage value. *Higgins testimony; Pet’r Rebuttal Ex. 17.*

20. Ms. Higgins’ second chart calculates the percentage of change in assessed value between 2015 and 2016. Only three properties, one of which is the subject property, saw an increase in assessed value between 2015 and 2016. According to this chart the subject property experienced the second largest increase between 2015 and 2016 at 41.64%. *Higgins testimony; Pet’r Rebuttal Ex. 18.*
21. The Assessor has failed to support the 2016 and 2017 assessments. The Petitioner’s rebuttal exhibits indicate many of the Assessor’s purportedly comparable sales were “atypically motivated, they had seller financing, they had assemblage, and they had a lack of location or market adjustments.” For these reasons, the 2016 and 2017 assessments should revert to the 2015 value of \$110,000. *Jones argument; Pet’r Rebuttal Ex.1, 4, 5, 6, 7, 8, 9, 10, 11.*

RESPONDENT’S CONTENTIONS

22. The subject property is under-assessed. The assessment increased between 2016 and 2015 because “the value for 2015 was so low because of (a) settlement, it was not supported by market data.” The subject property is a 39 space asphalt paved parking lot located on North Street. The property borders the Cultural Trail, and is in an area commonly referred to by the Assessor’s office as the “northeast quadrant.” This “quadrant” consists of property east of Meridian Street and north of Washington Street. *Gastineau argument; Rogers testimony; Resp’t Ex. RA, RB.*
23. In support of this argument, the Respondent submitted sales information on fifteen downtown parking lots that sold between 2012 and 2018. In analyzing the sales, the Respondent divided the sale price by the number of parking spaces to determine a price per parking space. In doing so, the Respondent was able to determine the parking lot value based on location, popularity, and “demand indicators such as location to large buildings.” *Rogers testimony; Resp’t Ex. RC, RD, RF, RG.*

24. The Respondent examined the following sales:

- Comparable #1 is a 48 space asphalt parking lot located at 106 East North Street, “a block” west of the subject property. This property sold on March 20, 2015, for \$330,000 or \$6,875 per space. The property sold again on March 1, 2017, for \$485,500 for the “development of apartments.” Based on the fact this property is located near restaurants, retail areas, and the federal building, there is a higher demand for parking, making the location superior to the subject property.
- Comparable #2 is located at 20 West St. Clair Street. This 61 space asphalt parking lot is used by the “condo development across the alley” and sold on October 7, 2014, for \$400,000 or \$6,557 per space. This lot is not pedestrian friendly, but is in a superior location.
- Comparable #3 is located at 1019 North Capitol Avenue. This 54 space asphalt parking lot consists of two parcels with one entrance and exit serving both parcels. The parking lot is located across the street from the Stutz Building providing the property with a “fair” amount of income and making it superior to the subject property. The two parcels sold on March 11, 2014, for \$515,000 or \$9,537 per space.
- Comparable #4 is located at 437 East New York Street. This 32 space parking lot sold, along with an office building, in October of 2015 for \$300,000 or \$9,375 per space. Based on the fact this lot is located in a “higher traffic area” than the subject property, it is a superior property.
- Comparable #5 is located at 26 North Delaware Street. This 12 space parking lot is located “across” from the City-County Building and sold on March 31, 2015, for \$160,000 or \$13,333 per space. This lot is in a “far” superior location than the subject property.

- Comparable #6 is located at 320 North Capitol Avenue. It is a 19 space asphalt parking lot that sold on December 9, 2016, for \$288,000 or \$15,158 per space. Based on the fact this lot experiences “heavy traffic,” it is “far” superior to the subject property.
- Comparable #7 is located at 420 North East Street. It is a 41 space “practical” dirt parking lot located off an interior alley. This property sold on March 11, 2016, for \$575,000 or \$14,024 per space. It is located in close proximity to the Athenaeum Entertainment Facility making it “far” superior to the subject property.
- Comparable #8 is located at 415 North New Jersey Street and was purchased on March 11, 2016, for \$1,550,000 or \$11,923 per space.⁵ This 130 space asphalt parking lot is also located “close” to the Athenaeum Entertainment Facility with “good” street frontage visibility. The location of this lot is “far” superior when compared to the subject property.
- Comparable #9 is located at 317 Indiana Avenue. This six space “dirt interior parking lot” is located on a “smaller” traffic street. The lot sold on September 1, 2017, for \$100,000 or \$16,666 per space. Due to its proximity to “taller” buildings, it is “somewhat” superior to the subject property.
- Comparable #10 is located at 419 East Ohio Street.⁶ This property consists of two parking lots with a total of 72 spaces located on both sides of a brick building. This property sold on March 14, 2018, for \$955,000 or \$13,263 per space. Due to the surrounding “tall buildings and other demand generators,” the location of this lot is superior.

⁵ The same buyer purchased 420 North East Street and 415 North New Jersey Street on March 11, 2016. *Rogers testimony; Resp’t Ex. RF.*

⁶ The sales disclosure form and property record card show the property’s address as 427 East Ohio Street. *See Resp’t Ex. RC-25 & RD-57.*

- Comparable #11 is located at 810 North Illinois Street. This 20 space parking lot has entrances on Illinois Street and from the alley on West Union Street. This property sold on August 22, 2018, for \$250,000 or \$12,500 per space. This parking lot is the “most similar” to the subject property in terms of physical characteristics, however, is located in a higher traffic area making it superior based on location. Mr. Rogers notes this property was part of a sale including a former liquor store located across the street, so “one wonders whether there is a premium involved.”
- Comparable #12 is located at 16 East Henry Street. This 189 space parking lot sold on August 30, 2016, for \$4,000,000 or \$21,164 per space. The lot is located within walking distance to Lucas Oil Stadium, Banker’s Life Fieldhouse, and fast food restaurants. Thus, this property is “far” superior to the subject property.
- Comparable #13 is located at 131 North Alabama Street. This 74 space parking lot consists of two parcels. The property first sold on May 3, 2013, for \$1,080,000 or \$14,595 per space. In 2013 the property was used to “stage” construction trailers for the development of the Market 360 Tower. The second sale was on December 30, 2015, for \$700,000 or \$9,459 per space. This parking lot is located near “tall” buildings and is superior to the subject property.
- Comparable #14 is located at 124 North East Street. This 20 space parking lot is located at the “rear of a restaurant” and sold on January 1, 2013, for \$221,761.17 or \$11,088 per space. Because of high traffic volume on East Street, this parking lot is in a superior location.
- Comparable #15 is located at 363 Massachusetts Avenue. This 48 space parking lot consists of two parcels. The property first sold on October 24, 2012, for \$470,000 or \$9,792 per space. The second sale was on June 19, 2015, for \$3,825,000. The location of this property is superior to the subject property.

However, “it may have a premium involved in the purchase price due to the sale of the Massala properties next door.”

Rogers testimony; Resp’t Ex. RC, RD, RG, RF.

25. After analyzing the comparable sales, the two lowest sale prices per parking space were 106 North East Street in 2015 at \$6,875 and 20 West St. Clair Street in 2014 at \$6,557. According to the Respondent, these values would “need to be trended downward” to reflect the subject property’s value for 2016. *Rogers testimony; Resp’t Ex. RG.*
26. Mr. Rogers also compiled a 2017 and 2018 comparable assessment analysis. In doing so, he searched for “stand-alone parking parcels” located in the northeast quadrant of downtown Indianapolis. In performing his analysis, Mr. Rogers divided the total assessed value by the number of parking spaces to determine an assessed value per space. Seventy-one properties were analyzed and the assessed values ranged from \$3,600 to \$27,000 per parking space (rounded). The majority of the assessed values ranged from \$4,000 to \$7,000 per parking space. According to Mr. Rogers, because “a vast majority of parcels in the neighborhood are not being appealed year after year, it tells me the values are at least reasonable.” *Rogers testimony; Resp’t Ex. RH, RI.*
27. Mr. Rogers included fifteen exempt properties and four “inferior” parking lots in his analysis. The inferior parking lots are located in industrial areas and one is a “dirt lot.” The 2017 assessed values for these properties ranged from \$1,879 to \$2,619 per parking space. For 2018 the assessed values ranged from \$1,886 to \$2,619 per parking space. *Rogers testimony; Resp’t Ex. RH, RI.*
28. Based on the sales comparison and assessment analyses, the subject property should be valued at \$175,500 or \$4,500 per parking space. At the “very least” the evidence presented should support the current assessments.⁷ *Rogers testimony; Resp’t Ex. RH, RI.*

⁷ Mr. Rogers testified he is a commercial real estate appraiser with 23 years of experience. However, he also testified that he was not appearing at the Board’s hearing in his capacity as an independent appraiser, instead he was appearing as an employee of the Marion County Assessor. *Rogers testimony.*

29. In response to questioning from the Petitioner, Mr. Rogers testified that he did not adjust for location, economic conditions, demographics, atypical motivation, or the intended use of the property after the sale. He also conceded that he listed two sales from 2018 and that the sales information would not have been available on the relevant valuation dates. *Rogers testimony.*
30. If the subject property's assessed values were lowered to the 2015 value, the land value would be reduced below the adopted land base rate established by the county's land order. The county's land order was developed through the cost approach as outlined in the Real Property Assessment Manual. According to the land order map, the subject property's area has a land base rate of \$20 per square foot. This base rate was accurately applied to the subject property. *Gastineau argument; Resp't Ex. RJ.*

BURDEN OF PROOF

31. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
32. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
33. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing

authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

34. Here, the parties agree the total assessed value increased by more than 5% between 2015 and 2016. In fact, the total assessment increased from \$110,000 in 2015 to \$155,800 in 2016. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden of proving the 2016 assessment is correct. Assigning the burden for the 2017 assessment year will depend on the Board’s finding from 2016.

ANALYSIS

35. Real property is assessed based on its “true tax value,” which means, “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. 2011 MANUAL at 2. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
36. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct.

2005). For 2016 and 2017 assessments, the valuation date was January 1 of the respective year. *See* Ind. Code § 6-1.1-2-1.5.

2016 Assessment:

37. Here, the Respondent had the burden to prove the 2016 assessment was correct. First, the Respondent merely explained the increase in the assessed value from 2015 to 2016 was due to a settlement agreement reached between the parties in 2014. According to the Respondent, the settlement that was reached in 2014, and carried over to the 2015 assessment year as well, was not supported by market data. The Respondent's burden, however, is not merely to explain why the assessment increased. Instead, the Respondent must offer probative evidence proving the subject property's market value-in-use. *See* Ind. Code § 6-1.1-15-17.2.
38. The Respondent did offer some market-based evidence by introducing the sales of fifteen purportedly comparable parking lots. In presenting these sales, the Board can infer that the Respondent is attempting to rely on the sales comparison approach to establish the market value-in-use of the subject property.
39. For sales data to be probative, the properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the properties' relative market values-in-use. *Id.* at 471.
40. The type of analysis required by *Long* is lacking from Respondent's case. The evidence presented fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the subject property. While the

Respondent's witness Mr. Rogers did testify regarding some differences between the properties, he did not adequately quantify or adjust for specific differences.

41. Additionally, the Respondent failed to offer any evidence that submitting sale prices and price per parking space comports with generally accepted appraisal principles. Thus, the Respondent's sales comparison analysis lacks probative value.

42. Next, the Respondent presented what amounts to an assessment comparison using seventy-one parking lots from the "northeast quadrant" where the subject property is located. Indeed, parties may introduce assessments of comparable properties to prove the market value-in-use of a property under appeal. The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal practices. Ind. Code § 6-1.1-15-18. In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach. Here, Mr. Rogers simply stated the seventy-one purportedly comparable properties were stand-alone parking lots and listed the properties total assessed values and assessed value per parking space. Based on this data, Mr. Rogers concluded the subject property's total assessment should be increased to \$175,500 or \$4,500 per parking space. Simply because a property is a stand-alone parking lot in the same area does not prove that it is comparable. The lot size, topography, visibility, traffic count, location, age, quality of construction, conditions and amenities all play a role in the value of the property. *See, Long*, 821 N.E.2d at 470-71. Because the Respondent made no attempt to identify similarities in the properties or value the differences between the properties, the assessed values and price per parking space of the purportedly comparable properties do not support a finding that the subject property was assessed correctly or should be increased to \$4,500 per parking space.⁸ Consequently, the Respondent's evidence lacks probative value.

⁸ While the Respondent offered a unit value per parking space for valuing the subject property, the Guidelines recommend that parking accommodations use the following unit values; front foot, square foot, unit density, or acreage to value the land. *See, REAL PROPERTY ASSESSMENT GUIDELINES*, Chapter 2, page 67.

43. For these reasons, the Respondent failed to offer enough probative evidence to prove the 2016 assessment was correct or should be increased. Therefore, the Petitioner is entitled to have the assessment returned to its 2015 level of \$110,000. This ends the Board's inquiry for 2016 because the Petitioner only requested the assessment be reduced to its 2015 level.

2017 Assessment:

44. The burden remains with the Respondent for the 2017 assessment year. The Respondent presented the same testimony and evidence as he did for the 2016 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2017 assessment was correct or should be increased. Therefore, the Petitioner is entitled to have its 2017 assessment lowered to the 2016 level of \$110,000. This ends the Board's inquiry for 2017 because the Petitioner only requested the assessment be reduced to the prior year's level.

SUMMARY OF FINAL DETERMINATION

45. The Respondent had the burden of proving the 2016 and 2017 assessed values were correct. The Respondent failed to make a prima facie case supporting those values. Consequently, the Board orders that the 2016 and 2017 assessments revert to the 2015 level of \$110,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.